

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 ) WC Docket No. 08-55  
Kansas Corporation Commission's )  
Petition for Declaratory Ruling Affirming )  
the Lawfulness of its USF Certification )  
Procedure )  
 )  
 )

**REPLY COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION**

**INTRODUCTION**

The Nebraska Public Service Commission ("NPSC") hereby submits these reply comments in the above-captioned matter pursuant to the time frame established by the Commission in its Public Notice.<sup>1</sup> The Petition filed by the Kansas Corporation Commission (KCC) seeks a declaratory ruling on the lawfulness of its universal service fund certification procedures. The NPSC respectfully files these comments to weigh in generally to support the lawfulness of state commission authority to determine appropriate certification procedures.

**DISCUSSION**

While the NPSC does not face the same issue with high-cost certification that the KCC now faces<sup>2</sup>, the NPSC is undergoing a process to set standards for an annual determination of whether high-cost support received from the federal and state universal

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<sup>1</sup> DA 08-1060 (rel. May 2, 2008).

<sup>2</sup> The Kansas Corporation Commission found that the competitive eligible telecommunications carriers should not be permitted to utilize expenses for Southwestern Bell's (SWB's) study area because SWB does not receive federal high-cost model universal service fund support. The NPSC looks at support areas at the wire center and not the total company level and does not comment on the merits of the KCC's certification method from a policy standpoint. The NPSC's concerns are more limited in nature and specifically relate to the issue of the state role to determine whether to certify a carrier's use of federal support.

service programs was used for its intended purpose.<sup>3</sup> Last year the NPSC replaced its self-certification procedures with a detailed review of investment and use of high-cost support. The NPSC would like to create incentives through its process for competitive eligible telecommunications carriers (CETCs) to invest in the highest cost and insular areas of the state where absent universal service support such investments would not be made.<sup>4</sup> The NPSC urges the Commission to confirm that states have the ability to determine support areas within its borders and to determine a certification mechanism designed to ensure the goals of the 1996 Act are being met.

Some of the comments submitted in this proceeding triggered the NPSC's concern that if a particular certification procedure was declared "unlawful" then the impact on other state certification procedures could be far-reaching. For example, if the Commission declares the KCC is preempted from determining support areas in the state that would undermine the efforts of Nebraska to create incentives for investment in high-cost areas. Such a stance would be counterintuitive to the Commission's March 17, 2005 Designation Order<sup>5</sup> which encouraged states to adopt more rigorous eligible telecommunications carrier (ETC) guidelines. After the adoption of that Order, the NPSC went through a rulemaking proceeding to mirror Commission's requirements including the five-year plan requirement. Such filing requirements would be of little value

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<sup>3</sup> See *In the Matter of the Nebraska Public Service Commission, on its own Motion, Seeking to Establish Guidelines for the Purpose of Certifying the Use of Federal Universal Service Support and Seeking to Establish Guidelines for the Purpose of Certifying the Use of State Universal Service Support*, Docket Nos. NUSF-25/NUSF-66, Order Requiring Annual Certification Filings (May 15, 2007).

<sup>4</sup> Generally, the NPSC wants to make sure that high-cost support is directed to rural areas in the state and not being used to fund competition in Lincoln and Omaha.

<sup>5</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371 (rel. March 17, 2005).

if state commissions could not determine the appropriateness of an investment plan and where support should be directed.

US Cellular argues that the KCC's certification guidelines are in violation of 47 U.S.C. section 253(a) because a prohibition on the use of universal service support to construct facilities in a certain rural area has "the effect of prohibiting a carrier from providing service in that area."<sup>6</sup> In our opinion, this stretches section 253(a) too far. In essence any time a Commission denied ETC designation to a carrier requesting support then it would, according to this logic, be in violation of section 253(a). In addition, many wireless carriers and other competitive carriers enter the market prior to seeking federal support or do not seek support at all. The inability to receive universal service support in a given area should not be characterized as a "barrier to entry" in violation of 253(a).

A subject of recent debate in the comprehensive USF reform proceeding is the fact that federal support to CETCs is not determined on their cost; at least not while the identical support rule is in place. There should be no question that CETCs should be required to justify the need and use of support. State commissions have particularized knowledge of geographic and economic conditions within their borders and should be given broad discretion to craft a mechanism for certifying use of universal service support.

Universal service support is not a blank check to be used for wherever and whatever the ETC or CETC desires. State commissions are not expected to treat it as such. Rather, state commissions are given the very specific role to determine whether support

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<sup>6</sup> Comments of United States Cellular Corporation and Rural Cellular Corporation in Opposition to the KCC's Petition for Declaratory Ruling (filed June 2, 2008) at 9.

is going towards investment in high-cost areas. The Commission should confirm that state commissions have broad discretionary authority to determine where those high-cost areas are to the extent that such standards are consistent with the federal universal service goals.

Dated this 17<sup>th</sup> day of June, 2008.

Respectfully Submitted,

The Nebraska Public Service Commission

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